

Appln. Serial No. 10/510,959

Amdt. Dated May 25, 2010

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REMARKS/ARGUMENTS

Claim Amendments

Claim 8 was amended by indicating that the isolated peptide:

- (i) is 38 – 41 amino acids;
- (ii) by indicating that the fragment is from the “carboxy terminal” end;
- (iii) by removing reference to “analog” and “derivative”; and
- (iv) by removing the word “about”.

It is submitted that support for this amendment can be found in paragraph [104] of the application

Claim 9 was amended by indicating that the amidation signal sequence is selected from the group consisting of “GKR and GRR”. Support for this amendment can also be found in paragraph [104] of the application.

35 USC § 112

The Examiner rejected claim 8 on the basis of the term “about”. Applicant has amended claim 8 without prejudice by removing said word from the claim.

The Examiner rejected claim 9 on the basis of the phrase “amidation signal sequence”. The Examiner stated that this term appears to be novel within the art. The Examiner stated that the references previously submitted do not have this phrase within their claims. It is submitted that the test for whether a phrase is known in the art is not whether it is within the claims of the prior art submitted but whether it is a term that is used and well known in the art. In this regard, it is submitted that it is and restriction to a particular amidation signal sequence would not be necessary. However, Applicant has amended claim 9 without prejudice of the doctrine of equivalents or in pursuing any subject matter in this or a subsequent divisional, continuation or continuation-in-part application to refer to the amidation signal sequences in paragraph [104] of the description. Support

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for the amendment to claim 9 can be found in the application as originally filed, for example at paragraph [104].

It is submitted that the above-noted amendments also traverses the rejections to claims 10 and 34 which were made on the basis of being dependent on claims 8 and 9.

Last, the Examiner rejected claim 8 on the basis that the claim is defined to genus of molecules where there is no defined structure for analogs, derivative and including the lack of specification of the location of the 38 amino acid fragment. Applicant traverses the rejection as follows. First, Applicant cannot agree that there is no support in the description for the genus of molecules encompassed by the claims. For example, the Application is replete with support of homologs. The Examiner has not objected to this term. With respect to the terms "analogs" and "derivatives", they are defined in paragraphs [102] and [103] respectively and sufficiently provide structural definitions however, Applicant has amended claim 8 without prejudice to the doctrine of equivalents and pursuing any such subject matter in this or a divisional, continuation, or continuation-in-part or other application by removing reference to "analog" and "derivative" from claim 8. . Last, Application submits that this is not the situation where only one sequence has been provided. Applicant has provided many examples within this novel peptide family as evidenced by the sequence listing submitted with the application and the Examples. It is submitted that the Applicant has demonstrated possession of the genus of molecules encompassed by the claims.

In addition claim 8 has been amended without prejudice. In response: (i) the claim now states that the isolated peptide is 38 – 41 amino acids; and (ii) that the 38 amino acid is from the carboxy terminus. Support for this amendment can be found at paragraph [104] of the application as originally filed.

It is respectfully submitted that the claim amendments and above-noted submissions traverses the Examiner's rejection.

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35 USC § 102

The Examiner maintained the rejection pursuant to 35 USC 102 on the basis that the term "consisting essentially" is, in the Examiner's opinion to be interpreted as "comprising" and thus the claim reads on the prior art. Applicant traverses the rejection without prejudice by indicating that the isolated peptide is a 38 – 41 amino acid peptide that consists essentially of the SEQ. ID. NO. 69, or homolog thereof or at least 38 amino acid carboxy terminal fragment thereof. The prior art does not disclose such a sized peptide. It is submitted that this traverses the Examiner's rejection.

All statements and amendments to the application and claims made herein are made without prejudice to Applicant's right to reassert any cancelled or withdrawn subject matter in this or a subsequently filed divisional, continuation or continuation-in part or reexamination proceedings and without prejudice to the application of the "doctrine of equivalents".

The Commissioner is hereby authorized to charge any fee which may be required to fully reply and enter this response, including any claim fees or extensions of time fees, or otherwise to keep the application in good standing, to our firm's Deposit Account No. 15-0633.

Should the Examiner like to discuss the matter, she is kindly requested to contact Anita Nador at 416-601-7530 at her convenience.

Respectfully submitted,
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Dated: May 25, 2010By: 

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